MONTANA LEGISLATIVE HISTORY

Chapter 188 19 75

Bill H _____ S 77 Original bill & history X C

H. Committee on Judiciary			S. Committee on State Adm		
Hearing Date(s)	3/6	X C	Hearing Date(s)	1/22	X C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

INTRODUCED BY Senate Committee (By request of the Governor) BILL NO. 77

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 11-3823, 16-3705, 23-4724, 26-109, AND 31-105, R.C.M. 1947, TO ALLOW PUBLIC OFFICERS AND EMPLOYEES TO PARTICIPATE IN ELECTION CAMPAIGNS, AND TO PROTECT THEM FROM UNDUE EMPLOYER INFLUENCE; REPEALING SECTION 23-4739, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-3283, R.C.M. 1947, is amended to read as follows:

"11-3283. Persons in classified service not affected by political or religious opinions or race.--~~political contributions--and--activity--forbidden~~ No person in the classified service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color, or religious beliefs." ~~No-officer-or-employee-of-the-municipality--shall directly--or--indirectly--solicit--or--receive,-or-be-in-any manner---concerned---in---soliciting---or---receiving,---any assessments,-subscription,-or-contribution-for-any-political party--or--political--purpose-whatever.--No-person-holding-a position-in-the-classified-service-shall-take--any--part--in political--management--or-affairs-or-in-political-campaigns, further-than-to-cast-his-vote-or-to--express--privately--his opinion.~~

Section 2. Section 16-3705, R.C.M. 1947, is amended to read as follows:

"16-3705. Qualifications of deputy sheriffs, marshals and policemen. (1) No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment, and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) graduate of an accredited high school or the equivalent thereof;

(b) good moral character;

(c) never been convicted of a felony;

(d) has not within five (5) years immediately preceding his date of employment been affiliated in any manner with a subversive organization;

(e) been examined by a physician licensed to practice in the state of Montana within thirty (30) days immediately preceding his date of employment and has been pronounced in good physical condition.

Subsection (2) of this section shall not be applicable to any deputy sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to

the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) conviction of a felony subsequent to the commencement of such employment;

(b) willful disobedience of an order or orders given by the sheriff;

(c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(d) sleeping while on duty;

(e) incapacity materially affecting ability to perform official duties;

(f) gross inefficiency in the performance of official duties;

~~(g)--participation--in--any--political--campaign--as--a~~

~~candidate--or--the-solicitation-of-political-support-for-any candidate-for-public-office.~~

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination."

Section 3. Section 23-4724, R.C.M. 1947, is amended to read as follows:

"23-4724. Unlawful acts of employers. (1) It shall be

unlawful for any employer, in paying his employees the salary or wages due them, to enclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of such employees. Nor shall it be lawful for an employer, ~~within--ninety--days-of-an-election,~~ to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill or placard or make any verbal statement containing any threat or promise, notice, or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This section shall apply to corporations, ~~as--well--as~~ individuals, and public officers and employees. ~~any-person-violating-the-provisions--of--this section-is-guilty-of-a-misdemeanor,-and-shall-be-punished-by a--fine--of--not-less-than-twenty-five-dollars-nor-more-than~~

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~~five-hundred-dollars,-and--imprisonment--not--exceeding--six months--in--the--county--jail,-and-any-corporation-violating this-section-shall-be-punished-by-fine-not--to--exceed--five thousand--dollars,-or-forfeit-its-charter,-or-both-such-fine and-forfeiture.~~

(2) No person may attempt to coerce, command, or require a public employee to influence or give money, service or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(3) No public employee shall solicit any money, influence, service or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job during working hours. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, for each separate offense."

Section 4. Section 26-109, R.C.M. 1947, is amended to read as follows:

"26-109. Political activity prohibited. While

retaining the right to vote as he may please, and to express his opinions on all political questions, no employee of the fish and game commission ~~shall--take--any--active--part--in political--management--or--political-campaigns,-nor-shall-he~~ may use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body."

Section 5. Section 31-105, R.C.M. 1947, is amended to read as follows:

"31-105. Appointment and promotion of officers -- replacements and additions -- reserve patrolmen -- salaries --qualifications -- probationary training -- tenure -- disciplinary action -- hearing -- appeal. (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the

incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

(i) Sound and active physical and mental condition.

(ii) Good moral character.

(iii) Resident of Montana for at least one (1) year immediately prior to appointment.

(iv) Pass a satisfactory test in the operation of automobiles.

(v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

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(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

~~(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.~~

~~(j)~~ (i) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension,

demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension--demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the

charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

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(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending

the determination of the charge or charges, or as may be directed by the court."

Section 6. Section 23-4739, R.C.M. 1947, is repealed.

Section 7. Effective date. This act is effective upon passage and approval.

-End-

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81	MURPHY	REMOVING ANNUAL SALARY RESTRICTION FOR JUSTICES OF THE PEACE	SENATE KILLED IN

44th LEGISLATIVE SESSION

COMMITTEE ON STATE ADMINISTRATION

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
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(Separate sheet for Senate, House Bills, and Resolutions)

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N O T I C E

TO: SECRETARY OF SENATE'S OFFICE

FROM: Committee on STATE ADMINISTRATION

DATE: January 23, 1975

THE FOLLOWING BILLS ARE IN COMMITTEE AND THEIR STATUS IS AS FOLLOWS:

SENATE BILLS:

SB 25 - re-referred to committee
SB 15 - DO PASS AS AMENDED
SB 26 - DO PASS
SB 31 - WITHOUT RECOMMENDATION
SB 33 - TRANSFERRED to Finance & Claims
SB 36 - DO PASS
SB 46 - DO PASS AS AMENDED
SB 62 - DO PASS AS AMENDED
SB 69 - TRANSFERRED to Finance & Claims
SB 77 - DO PASS

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SB 83	SB 152
SB 84	SB 167

HOUSE BILLS:

None

RESOLUTIONS:

SJR 3 - DO PASS
SJR 7 - In committee pending action

HJR 1 - In committee pending action

Mary Ann Lee
Secretary

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MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 22, 1975

The fifth meeting of the State Administration Committee was called to order by Chairman Mike Greely on January 22, 1975 at 8:05 a.m. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present, with the exception of Senator Murphy, who came in late.

CONSIDERATION OF SENATE BILL NO. 77: An act to allow public officers and employees to participate in election campaigns, and to protect them from undue employer influence.

CONSIDERATION OF SENATE JOINT RESOLUTION NO. 3: Repealing rule 2-3.34(10)-S3450 of the Montana Administrative Code, concerning limitation of political activities.

Senator Greely was the sponsor of both Senate Bill 77 and Senate Joint Resolution 3. Since the Vice Chairman was not present at the beginning of the meeting, he turned the chair over to Senator Devine before beginning and explanation of these two bills.

Senator Greely explained that these two bills are companion measures, and should be considered together since one should not be passed without the other.

Mr. Tom Schneider, Montana Public Employees Association, appeared as a proponent of these two bills, explaining that there are presently some problems in this area in the current laws. He feels there is still some misconception about the Federal Hatch Act. It did not, as some people seem to think, prohibit employees from political activities, except for the right to run for office. Therefore since there are no such prohibitions at the federal level, he hopes we can remove the prohibitions at the state level. According to Mr. Schneider, the present laws don't make sense because people are being coerced into contributing to political campaigns, and there are not penalties being enforced because they can't prove anything since the employee would first have to admit to the crime he had been forced to commit. These two bills would allow employees to participate of their own free will and would set forth penalties still enough to enable action to be taken against anyone who tried to violate these rights.

Mr. Steve Brown, of the Governor's office, also appeared as a proponent of the bills, explaining that he had been a member of the Governor's ad hoc committee and had assisted in drafting the bills that resulted from their deliberations. These bills would allow public employees to participate in the political process, with certain restrictions. For instance they could not campaign during working hours. He called the committee's attention to page 7 of the bill, explaining the three major changes as follows: In Section 3, page 7,

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SENATE BILL 77: Senator Devine made a motion that Senate Bill 77 DO PASS. Motion carried unanimously.

The meeting was adjourned at 9:20 a.m.

SENATOR MIKE GREELY, Chairman

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ROLL CALL

STATE ADMINISTRATION COMMITTEE

44th LEGISLATIVE SESSION - 1975 Date 1-22-75

NAME	PRESENT	ABSENT	EXCUSED
enator Mike GREELY, Ch.	X		
enator Terry MURPHY	X 8:30 a.m.		
enator John W. DEVINE	X		
enator Greg JERGESON	X		
enator Ann SEIBEL	X		
enator Antoinette ROSELL	X		
enator George F. ROSKIE	X		
enator Peter STORY	X		

Each day attach to minutes

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Exhibit H

REPRODUCED FRO
DETERIORATING CO.

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601

405 NORTH LAST
CHANCE GULCH

REMARKS OF ERNEST POST ON SENATE BILL 77 AND SENATE JOINT RESOLUTION 3, HEARINGS OF STATE ADMINISTRATION COMMITTEE, JANUARY 22, 1975

Mr. Chairman, the Montana State AFL-CIO and the National AFL-CIO have long called for removal of the shackles that bind public employees in the field of political activity.

The two measures before you today seem to us to be the proper way to go about that. Senate Bill 77 affirms the right of participation in the electoral process given state and municipal employees in the Election Reform Act of 1974, and the resolution repeals the Montana administrative codes pertaining to political activity by employees.

Particularly important, as we view the situation, is the protection against undue employer influence built into Senate Bill 77. Because we believe that if public employees are to be free at last to participate in the political system they must be truly free to do it. Free from fear of reprisal for political disagreement; free from threat of reprisal; free from any employer influence or pressure.

Stangely enough, the so-called Hatch Act arose in the late 1930's not because federal employees were pressured into voting a certain way, but because they spontaneously organized to support President Roosevelt.

For decades now, because of their effectiveness, public employees at all levels have been unable to fully exercise their rights as Americans.

Last year the Congress moved to change that. We believe that part of their consideration, and it certainly should be part of yours, was that if we are to be a free society then we must all have the same rights, privileges and advantages. Depriving one sector of the people of one right, actually diminishes the rights of all.

So it seems just to us, that since the Congress has spoken, this Legislature should strike the same blow for freedom for public employees and approve both Senate Bill 77 and Senate Joint Resolution 3.

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January 22, 1975

Re: Senate Bill No. 77

"AN ACT AMENDING SECTIONS 11-3823, 16-3705, 23-4724, 26-109, AND 31-105, R.C.M. 1947, TO ALLOW PUBLIC OFFICERS AND EMPLOYEES TO PARTICIPATE IN ELECTION CAMPAIGNS, AND TO PROTECT THEM FROM UNDUE EMPLOYER INFLUENCE: REPEALING SECTION 23-4739, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

COMMITTEE: Senate State Administration

SPONSOR: Michael T. Greely (By request of the Governor)

The American Federation of State, County and Municipal Employees, AFL-CIO, is in support of Senate Bill 77 which amends certain Montana Statues commonly known as the "Montana Little Hatch Act".

The Federal Hatch act has been amended, effective January 1, 1975, to allow state, county and municipal employees of agencies that use federal funds to participate, on their own time, in partisan election campaigns by working for the candidate of their choice.

Senate Bill 77 will amend Montana's Statues concerning public employee involement in the political process essentially in the same areas as the Federal Hatch Act was amended by Congress.

Senate Bill 77 provides the right of public officers and employees to take an active part in the political process which is the heart of this democracy and comes automatically with citizenship for other Americans.

This Bill retains safe-guards which prevent public employees from being influenced by their employers to contribute to or work for any candidate and expands this protection by added language and providing a penalty for those persons who

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may coerce, command, or require a public employee to give money, to give service, or to promote any political committee or person to public office.

The compainion measure, Senate Joint Resolution No. 3 introduced by Senator Greely, removes the rule contained in the Montana Administration Codes which addresses this subject matter.

We urge the passage of SB 77 and SJR 3.

Stan Gerke

Stanley W. Gerke
AFSCME, AFL-CIO
600 North Cooke Street
Helena, Montana 59601

Phone: 442-0760

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January 22, 1975

Re: Senate Joint Resolution No. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REPEALING RULE 2-3.34(10)-S3450 OF THE MONTANA ADMINISTRATIVE CODE, CONCERNING LIMITATION OF POLITICAL ACTIVITIES, AND PROVIDING AN EFFECTIVE DATE.

COMMITTEE: Senate State Administration

SPONSOR: Michael T. Greely (By request of the Governor)

This resolution is a companion measure to Senate Bill No. 77. SB 77 amends the Montana Statues to allow public officers and employees to participate in election campaigns. This resolution strikes that language from the Montana Administrative Code concerning limitation of political activities.

We urge the support and passage of SJR 3 and SB 77.

I have attached a copy of my prepared testimony of SB 77 for your convenience.

Stan Gerke

Stanley W. Gerke
AFSCME, AFL-CIO
600 North Cooke Street
Helena, Montana 59601

Phone: 442-0760

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SENATE COMMITTEE on STATE ADMINISTRATION

Date 1-22-75 Senate Bill No. 77 Time 9:19 a.m.

NAME	YES	NO
GREELY, Mike - Chairman	X	
MURPHY, Terry - Vice Chairman	X	
DEVINE, John W.	X	
JERGESON, Greg	X	
SEIBEL, Ann	X	
ROSELL, Antoinette Fraser	X	
ROSKIE, George F.	X	
STORY, Peter	X	

Mary Anne Fisher
Secretary

Mike Greely
Chairman

Motion: That Senate Bill 77 DO PASS.

(include enough information on motion--put with yellow copy of committee report.)

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 494	An act to amend section 92-2004.1 by granting an injured employee an independent action against a grossly negligent employer.	1/30/75	James Moore	2/17/75	2/19/75 tabled	
HB 496	Amending Rule 20 of the Mt. rules of civil procedure to allow the joinder of insurers of motor vehicles in certain cases.	1/30/75	James Moore	2/17/75	DO PASS AS AMENDED	2/21/75
HJR 41	Joint Resolution of Senate & House directing the adoption of a new rule in Mt. administrative code establishing an endangered species list.	1/30/75	James Moore		transferred to another committee	
HJR 42	Joint resolution of senate & House requesting a study of the laws relating to residence and domicile.	1/30/75	James Moore	2/25/75	DO PASS	2/25/75
SJR 3	Joint Resolution of senate and House repealing rule 2-3.34(10)-S3450 of Mt. administrative code, concern-limitation of political activities & providing effective	1/30/75	Greely	3/8/75	BE CONCURRED IN	3/10/75
SB 77	To allow public officers & employees to participate in election campaigns & to protect them from undue employer influence, providing effective date.	1/30/75	Greely	3/8/75	AS SO AMENDEDBE CONCURRED IN	3/10/75

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JUDICIARY COMMITTEE

March 8, 1975

The forty eighth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Saturday, March 8, 1975 at 9:00 AM. Representative Herb Huennekens, chairman, excused. Representative James Moore, Vice-chairman, presided. All members were present except Representatives Kimble, Scully, Seifert and Vincent, absent, excused.

Bills scheduled for hearing this date were Senate Bill No. 218, Senate Joint Resolution No. 3, and Senate Bills Nos. 77, 121 and 402 and were heard in this order.

SENATE BILL NO. 218 Senator Joe Roberts, District #11, is chief sponsor of this act to amend the constitution to reduce the size of legislature to twenty five members in the Senate and fifty members in the House. He stated he feels this is a propitious time to consider this issue. In one form or another the voters will be dealing with the question of annual sessions. They should be given the further alternative of reducing the size of legislature. It would allow more efficiency without jeopardizing anything.

Proponent Senator Goodover stated that a recent study showed the legislators are underpaid, overworked and ill informed. He feels that reducing the size and increasing the time in legislature is one step in making legislature a more effective body. Areas wouldn't have to be redistricted to make this possible. Feels we should give people the opportunity to see how many legislators they favor in Helena.

No other proponents. No opponents. No closing. Representative Hager questioned when the people would vote on this was told in the '76 election and it would apply in '78. Representative Lester questioned if this were accepted would you have to revise campaign fund limits and was answered that you might have to.

Hearing was then closed.

Chairman Huennekens present and presiding now.

SENATE JOINT RESOLUTION No. 3 Senator Mike Greely, District #20, stated he'd like to take Senate Bill No. 77 in conjunction with this resolution. He stated that SJR #3 repeals a law. The bills are a product of an ad hoc committee the governor appointed since the last legislative session. There is a similar bill by Representative Richards in the House. He doesn't care which one passes. Senator Greely's bill talks in terms of misdemeanor penalty - he favors it because if penalty too severe sometimes you can't get a conviction. He stated we can't cut any sector off completely from our political process, they have the right to vote, feels they should be allowed to participate.

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The argument against public employees in politics is that some fear that your boss will somehow be coercing you to donate to his campaign. He feels we have an adequate vehicle for someone to go and complain to and hopes this committee will give positive consideration.

Proponent Tom Schneider representing the Montana Public Employees Association, stated they support both of these bills. He stated the present law doesn't do any good, it has no penalty, no teeth. Public employees still contribute and have to do it illegally now. To go to court a public employee has to first admit he broke the law.

Proponent Mike Pichette, representing the Democratic party, urged support of this bill. Proponent Stan Gerke, representing the AFL-CIO stated they are in favor of these bills. He added the comment that the Federal Hatch Act has been amended effective 1/1/75. Proponent Ernie Post, representing the AFL-CIO, suggested adding the words "during working hours" on page 7, line 11, then in lines 14 and 15 strike "while on the job during work hours". He feels this would clear the language. The intent here is they can't solicit money off the job either.

Proponent Al Sampson, representing the Montana Firemen's Association, urged support of both the bill and the resolution. Proponent Evan Barrett, representing the ad hoc committee that prepared this bill, stated this committee was concerned with two things, to insure the right to participate and not make public employees second class citizens and secondly, to insure no coercion. He stated he also wished to clarify that the Federal Hatch Act was amended to lift restriction on state and federal employees if in job with federal funding. The amendment received overwhelming support of the ad hoc committee. Urged concurrence.

No further proponents. No opponents. No closing. Representative Moore questioned if in putting in provision under "unlawful act of Employers" it wasn't consistent, should broaden title. Senator Greely agreed.

Representative Meloy questioned whether Senator Greely had any objection to taking out subsection (3) on page 7 and wondered why this was in the bill to which Senator Greely replied he had no objection, the section was to take sting away from the bill. He wanted to make it clear that this was prohibition.

Hearing was then closed on SJR 3 and SB 77.

SENATE BILL NO. 121 Senator Joe Roberts, District #11, chief sponsor stated this is one of a package of bills with technical amendment to the criminal code and deals with the definition of intoxicating substances. On page 5 of the bill it refers to the effect a drug has on a person, not the substance. The net result is that you would have to prove a youngster became intoxicated. The intent of the section was to define by content of substance.

SENATE BILL NO. 77

INTRODUCED BY GREELY (BY REQUEST OF THE GOVERNOR)

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 11-3283, 16-3705, 23-4724, 26-109, AND 31-105, R.C.M. 1947, TO ALLOW PUBLIC OFFICERS AND EMPLOYEES TO PARTICIPATE IN ELECTION CAMPAIGNS, AND TO PROTECT THEM FROM UNDUE EMPLOYER INFLUENCE; REPEALING SECTION 23-4739, R.C.M. 1947~~;--AND PROVIDING AN EFFECTIVE DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-3283, R.C.M. 1947, is amended to read as follows:

"11-3283. Persons in classified service not affected by political or religious opinions or race.~~--political contributions--and--activity--forbidden~~ No person in the classified service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color, or religious beliefs." ~~No officer or employee of the municipality shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessments, subscription, or contribution for any political party or political purpose whatever. No person holding a position in the classified service shall take any part in political management or affairs or in political campaigns, further than to cast his vote or to express privately his opinion.~~

Section 2. Section 16-3705, R.C.M. 1947, is amended to read as follows:

"16-3705. Qualifications of deputy sheriffs, marshals and policemen. (1) No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment, and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) graduate of an accredited high school or the equivalent thereof;

(b) good moral character;

(c) never been convicted of a felony;

(d) has not within five (5) years immediately preceding his date of employment been affiliated in any manner with a subversive organization;

(e) been examined by a physician licensed to practice in the state of Montana within thirty (30) days immediately preceding his date of employment and has been pronounced in good physical condition.

Subsection (2) of this section shall not be applicable to any deputy sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to

the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) conviction of a felony subsequent to the commencement of such employment;

(b) willful disobedience of an order or orders given by the sheriff;

(c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(d) sleeping while on duty;

(e) incapacity materially affecting ability to perform official duties;

(f) gross inefficiency in the performance of official duties;

~~(g) participation in any political campaign as a~~

~~candidate or the solicitation of political support for any candidate for public office.~~

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination."

Section 3. Section 23-4724, R.C.M. 1947, is amended to read as follows:

"23-4724. Unlawful acts of employers AND EMPLOYEES.

(1) It shall be unlawful for any employer, in paying his employees the salary or wages due them, to enclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of such employees. Nor shall it be lawful for an employer, ~~within ninety days of an election,~~ to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill or placard ~~or make any verbal statement~~ containing any threat or promise, notice, or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This section shall apply to corporations, ~~as well as~~ individuals, and public officers and employees. ~~any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine of not less than twenty five dollars nor more than~~

~~five-hundred-dollars,-and--imprisonment--not--exceeding--six months--in--the--county--jail,-and-any-corporation-violating this-section-shall-be-punished-by-fine-not--to--exceed--five thousand--dollars,-or-forfeit-its-charter,-or-both-such-fine and-forfeiture.~~

(2) No person may attempt to coerce, command, or require a public employee to influence or give money, service or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(3) No public employee ~~shall~~ MAY solicit any money, influence, service or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job ~~during-working----hours~~ OR AT HIS PLACE OF EMPLOYMENT. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, for each separate offense."

Section 4. Section 26-109, R.C.M. 1947, is amended to read as follows:

"26-109. Political activity prohibited. While retaining the right to vote as he may please, and to express his opinions on all political questions, no employee of the fish and game commission ~~shall--take--any--active--part--in political--management--or--political-campaigns,-nor-shall-he~~ may use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body."

Section 5. Section 31-105, R.C.M. 1947, is amended to read as follows:

"31-105. Appointment and promotion of officers -- replacements and additions -- reserve patrolmen -- salaries --qualifications -- probationary training -- tenure -- disciplinary action -- hearing -- appeal. (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one

per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

(i) Sound and active physical and mental condition.

(ii) Good moral character.

(iii) Resident of Montana for at least one (1) year immediately prior to appointment.

(iv) Pass a satisfactory test in the operation of automobiles.

(v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

~~(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.~~

~~(j)~~ (i) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension,

demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension--demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the

charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath ~~and to require~~ the production of books, papers, and ~~other evidence~~ at such hearing and for that purpose issue subpoenas ~~and cause~~ the same to be served and executed in any part of the ~~state~~.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending

the determination of the charge or charges, or as may be directed by the court."

Section 6. Section 23-4739, R.C.M. 1947, is repealed.

~~Section 7. Effective date. This act is effective upon passage and approval.~~

-End-